

WC 06-45

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February 16, 2006

FCC/MELLO: FEB 17 2006

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Wireline Competition Bureau - CPD 214 Appls.
c/o Mellon Bank
P.O. Box 358145
Pittsburgh, PA 15251-5145

RE: Transfer of Control of the Subsidiaries of Birch Telecom, Inc., Debtor-in-Possession, to the Shareholders of the Newly Reorganized Birch Telecom, Inc.

Dear Secretary Dortch:

Enclosed on behalf of Birch Telecom, Inc., Debtor-in-Possession ("Birch DIP"), and its subsidiaries providing domestic and international telecommunications services, please find an original plus six (6) copies of an application for Commission approval to transfer control of Birch DIP to the shareholders of the newly reorganized Birch Telecom, Inc. ("New Birch"), pursuant to a Third Amended Joint Reorganization Plan ("Reorganization Plan") proposed by Birch DIP. Subject to bankruptcy court approval, the Reorganization Plan authorizes Birch DIP to emerge from bankruptcy court protection with a new capital structure as New Birch.

Pursuant to Section 63.04(b) of the Commission's rules, this application is submitted as a combined domestic Section 214 transfer of control application and international Section 214 transfer of control application ("Combined Application"). This Combined Application was filed with the International Bureau, in accordance with the Commission's rules, via the International Bureau Filing System (IBFS).

Marlene H. Dortch, Secretary
February 16, 2006
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Also enclosed is a completed FCC Form 159 and a check made payable to the Federal Communications Commission in the amount of \$895.00 to cover the filing fee for the domestic transfer application.

If you have any questions concerning this submission, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Weimer", with a horizontal line extending from the end.

Brian D. Weimer
Counsel for Birch Telecom, Inc.

Enclosures

cc: William Dever
David Krech

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Birch Telecom, Inc., Debtor-in-Possession)	
)	
and)	File No. ITC-T/C-2006_____
)	
Birch Telecom, Inc.)	
)	WC Docket No. 06-_____
Application Under Section 214)	
of the Communications Act of 1934,)	
as Amended, and Sections 63.04 and 63.24)	
of the Commission's Rules for Authorization)	
to Transfer Control of Birch Telecom, Inc.,)	
Debtor-in-Possession, to the Shareholders of)	
the Newly Reorganized Birch Telecom, Inc.)	

**APPLICATION FOR CONSENT TO THE TRANSFER OF CONTROL OF
DOMESTIC AND INTERNATIONAL SECTION 214 AUTHORIZATIONS**

Birch Telecom, Inc., Debtor-in-Possession ("Birch DIP") and the shareholders of the newly reorganized Birch Telecom (together "Applicants"), pursuant to Section 214 of the Communications Act of 1934, as amended, and Sections 1.763, 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, 47 C.F.R. §§ 1.763, 63.03, 63.04, 63.18, and 63.24, hereby request authority to transfer control of the domestic and international Section 214 authorizations held by certain subsidiaries of Birch DIP from Birch DIP to the shareholders ("New Birch Shareholders") of the newly reorganized Birch Telecom ("New Birch") pursuant to a Third Amended Joint Reorganization Plan (the "Reorganization Plan") proposed by Birch DIP. Subject to bankruptcy court approval, the Reorganization

Plan authorizes Birch DIP to emerge from bankruptcy court protection with a new capital structure as New Birch.

As permitted by Section 63.04(b) of the Commission's rules, 47 C.F.R. § 63.04(b), Applicants are filing a combined domestic and international Section 214 transfer of control application. In connection with the proposed transfer of control of Birch DIP, subsidiaries of which hold international and domestic Section 214 authority, Applicants provide below the information required by Sections 63.18 and 63.24(a) of the Commission's rules, 47 C.F.R. §§ 63.18, 63.24(a). In addition, in place of an exhibit, the information required by Section 63.04(a)(6) through (a)(12) of the Commission's rules, 47 C.F.R. § 63.04(a)(6)-(12), with respect to the transfer of control of the domestic interstate operations of certain subsidiaries of Birch DIP, which are conducted by virtue of blanket domestic authority under Section 214, is provided in Section V below.

Applicants respectfully request streamlined, expedited treatment of this Application pursuant to Sections 63.03 and 63.12 of the Commission's rules, 47 C.F.R. §§ 63.03, 63.12. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's rules, 47 C.F.R. § 63.03(b)(2)(i), because none of Birch DIP, New Birch or their respective affiliates are dominant with respect to any telecommunications service. As a result of the transaction, New Birch and its affiliates together will have market share in the interstate, interexchange market of substantially less than ten percent (10%), and will not be dominant with respect to any domestic telecommunications service. This Application also qualifies for streamlined treatment under Section 63.12 because: (i) neither New Birch nor any of its subsidiaries is affiliated with a dominant foreign carrier; (ii) as a result of the transaction, neither New

Birch nor any of its subsidiaries will become affiliated with any foreign carrier; and (iii) none of the other scenarios outlined in Section 63.12(c) apply.

I. The Applicants

Birch DIP is a Delaware corporation that, through its twenty-eight direct and indirect subsidiaries, provides small and medium-sized businesses with comprehensive voice and data services. Voice services provided by Birch DIP and its subsidiaries include local dial tone, long distance, and various calling features such as "911" and call waiting. Data services include high-speed Internet access, web hosting, and other services such as virtual networking. Birch DIP currently serves customers in twenty five states. In 2004, prior to its bankruptcy, Birch DIP recognized over \$292 million in revenue.

Birch DIP is a holding company and certain of its subsidiaries hold international Section 214 authorizations and blanket domestic Section 214 authority.¹ Once the Reorganization Plan has been approved by the bankruptcy court and the conditions under the Reorganization Plan have been satisfied, Birch DIP will emerge from bankruptcy with a new capital structure as New Birch. New Birch and its subsidiaries will provide the same telecommunications services that Birch DIP and its subsidiaries currently provide.

¹ See Exhibit A hereto for a list of the international Section 214 authorizations issued to subsidiaries of Birch DIP, and see Exhibit B hereto for the Birch DIP subsidiaries that provide telecommunications services under blanket domestic Section 214 authority.

II. Description of the Proposed Transaction (Answer to Question 13)

Pursuant to the Reorganization Plan, all of Birch DIP's outstanding indebtedness will be extinguished and certain of Birch DIP's creditors will receive equity in New Birch. Following the reorganization of Birch DIP, no single shareholder will control New Birch. Moreover, all of the New Birch Shareholders were also shareholders of Birch DIP.

Attached hereto as Exhibit C is a chart illustrating the existing structure of Birch DIP and its subsidiaries. The only change to this chart following Birch DIP's emergence from bankruptcy will be that Birch DIP and each of its subsidiaries will no longer be described as "Debtors-in-Possession."

III. The Proposed Transaction Furthers the Public Interest

The proposed transaction permits Birch DIP to emerge from bankruptcy court protection with a streamlined capital structure that will enable it to compete more vigorously in the markets where it provides telecommunications services. Birch DIP's emergence from bankruptcy court protection, moreover, will not adversely affect competition in any of the markets in which Birch currently provides service. In each market where Birch provides service, it competes with the incumbent local exchange carrier and other competitive local exchange carriers.

New Birch will continue to provide service to all of the customers of Birch DIP without interruption. New Birch also will continue to hold authority to operate and expects to retain all customer contracts currently held by Birch DIP. There will be no change in the terms, conditions, or price of service, and no detrimental change in

customer service. In addition, New Birch's management and employees will remain primarily the same as Birch DIP's upon consummation of the proposed transaction.

In sum, the proposed transaction furthers the public interest by providing consumers with continued and enhanced choices among telecommunications providers and does not undermine the public interest, convenience or necessity in any way.

IV. Information Required by Section 63.24(e) of the Commission's Rules

Pursuant to Section 63.24(e) of the Commission's rules, Applicants submit the following information from Section 63.18(a)-(d) for the Transferor and the Transferee, and from Section 63.18(h)-(p) for the Transferee:

Section 63.18 (Transferor and Transferee)

(a) Name, address and telephone number of each Applicant:

Transferor

Birch Telecom, Inc., Debtor-in-Possession
2300 Main Street, 6th Floor
Kansas City, MO 64108
Tel: (816) 300-3000

Transferee

Birch Telecom, Inc.
2300 Main Street, 6th Floor
Kansas City, MO 64108
Tel: (816) 300-3000

(b) Jurisdiction of Organizations:

Birch DIP and New Birch are the same corporation, which is organized under the laws of the State of Delaware.

ANSWER TO QUESTION 10

(c) Correspondence concerning this Application should be sent to:

For Transferor and Transferee:

Greg C. Lawhon
Chief Executive Officer
Birch Telecom, Inc.
2300 Main Street, 6th Floor
Kansas City, MO 64108
(816) 300-3000

With a copy to:

Brian D. Weimer, Esq.
Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111
(202) 371-7000

(d) Existing Section 214 Authority:

Subsidiaries of New Birch will hold the very same domestic and international Section 214 authorizations that the subsidiaries of Birch DIP hold. Pursuant to these authorizations, subsidiaries of Birch DIP provide small and medium-sized businesses with facilities-based and resold voice and data services. Voice services include local dial tone, long distance, and various calling features such as "911" and call waiting. Data services include high-speed Internet access, web hosting, and other services such as virtual networking.

ANSWER TO QUESTION 11

Section 63.18 (Transferee)

(h) Name, Address, Citizenship and Principal Business of Owners with 10% or Greater Direct or Indirect Ownership Interest:

Each of the New Birch subsidiaries possessing a Section 214 authorization will be either directly or indirectly owned and controlled by New Birch. The following entities will hold a 10% or greater interest in New Birch:

Name/Address/Citizenship	Principal Business	Percent of Interest Held
UBS Willow Fund LLC c/o Bond Street Capital, LLC 700 Palisade Avenue Englewood Cliffs, NJ 07632 Citizenship: Domestic LLC	Investments	29.4%
Strategic Value Master Fund Ltd. c/o State Street Cayman Trust Co. P.O. Box 31113 SMB, 2nd Floor, Leeward Two, Safe Haven Corporate Centre, Grand Cayman, Cayman Islands Citizenship: Cayman Islands Limited Company	Investments	26.2%
Banc of America Strategic Solutions, Inc. 901 Main Street, 66 th Floor Dallas, Texas 75202 Citizenship: Domestic Corporation	Investments	10.3%

ANSWER TO QUESTION 12

Neither New Birch nor any of its subsidiaries will have any interlocking officers or directors with foreign carriers.

(i) Foreign Carrier Certification (Answer to Question 14):

New Birch certifies that it is not now, nor will it be upon consummation of the proposed transaction, a foreign carrier within the meaning of Section 63.09(d) of the Commission's rules. New Birch further certifies that it is not now, nor will it be upon

consummation of the proposed transaction, directly affiliated, within the meaning of Section 63.09 of the Commission's rules, with any foreign carriers.

(j) Destination Country Certification (Answer to Question 15):

New Birch does not seek to provide international telecommunications services to any destination country in which: (i) New Birch is a foreign carrier in that country; (ii) New Birch controls a foreign carrier in that country; or (iii) any entity that owns more than 25 percent of New Birch, or that controls New Birch, controls a foreign carrier in that country. New Birch also hereby certifies that it does not seek to provide international telecommunications services to any destination country in which two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of New Birch and are parties to, or the beneficiaries of, a contractual relation affecting the provision of marketing of international basic telecommunications services in the United States.

(k)-(m) Not applicable because New Birch is not a foreign carrier and is not affiliated with a foreign carrier (Answer to Questions 16, 17, 18).

(n) Special Concessions from Foreign Carriers:

Applicants certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any United States international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

(o) Certification Regarding Section 5301 of Anti-Drug Abuse Act of 1988:

Applicants certify pursuant to Sections 1.2001 through 1.2003 of the Commission's rules, 47 C.F.R. §§ 1.2001 - 1.2003, that no party to the Application is

subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(p) Streamlined Processing:

This international Section 214 Application qualifies for streamlined processing pursuant to Section 63.12 of the Commission's rules because: (i) neither New Birch nor any of its subsidiaries is affiliated with a dominant foreign carrier; (ii) as a result of the transaction, neither New Birch nor any of its subsidiaries will become affiliated with any foreign carrier; and (iii) none of the other scenarios outlined in Section 63.12(c) apply.

V. Additional Information Required by Section 63.04 of the Commission's Rules

Pursuant to Section 63.04 of the Commission's rules, 47 C.F.R. § 63.04, Applicants also request authority to transfer control of the blanket domestic Section 214 authority held by Birch DIP and its subsidiaries to New Birch. Applicants provide the following information in support of this request:

64.04(a)(6): Description of the Transaction

The proposed transaction is described above in **Section II**.

63.04(a)(7): Description of Geographic Service Area and Services in Each Area

Through various subsidiaries, Birch DIP is certificated to offer telecommunications services in all fifty states and provides facilities-based and resold telecommunications services in twenty-five states, including Alabama, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri,

Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, and Wyoming.

63.04(a)(8): Presumption of Non-Dominance and Qualification for Streamlining

This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's rules because: (i) upon completion of the transaction, New Birch will continue to have less than ten percent (10%) market share in the interstate, interexchange market; (ii) neither New Birch, Birch DIP, nor any of their subsidiaries are dominant with respect to any service, and (iii) Applicants and their affiliates will provide local exchange service only in areas served by dominant local exchange carriers.

63.04(a)(9): Other Pending Commission Applications Concerning the Proposed Transaction

There are no other applications pending before the Commission concerning this proposed transaction.

63.04(a)(10): Special Consideration

None.

63.04(a)(11): Waiver Requests (If Any)

None.

63.04(a)(12): Public Interest Statement

The proposed transaction will serve the public interest, convenience, and necessity for the reasons detailed in **Section III** above.


VI. Conclusion.

Based on the foregoing, Commission approval of the transfer of control set forth in this Application will serve the public interest, convenience, and necessity.

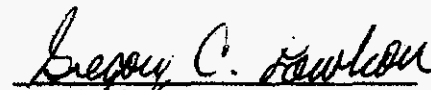
Accordingly, Applicants respectfully request that the Commission grant this Application as expeditiously as possible through its streamlined processing procedures.

Respectfully submitted,

Birch Telecom, Inc., Debtor-in-Possession


Greg Lawhon
Chief Executive Officer

Birch Telecom, Inc.


Greg Lawhon
Chief Executive Officer

Brian D. Weimer
Skadden, Arps, Slate, Meagher &
Flom LLP
1440 New York Ave., N.W.
Washington, D.C. 20005

Counsel for Applicants

Dated: February 16, 2006

EXHIBITS

- Exhibit A - International Section 214 Authorizations
- Exhibit B - Subsidiaries Providing Domestic Telecom Services
- Exhibit C - Corporate Organizational Chart

EXHIBIT A

BIRCH TELECOM

International Section 214 Authorizations:

1. **ITC-214-19990701-00441**

- a. **Issued to:** Birch Telecom of Missouri, Inc. (DE)
- b. The following companies are parties to this 214:
 - 1. Birch Telecom of Kansas, Inc. (KS)
 - 2. Birch Telecom of Texas Ltd., L.L.P. (TX)
 - 3. Dunn & Associates, Inc. d/b/a Boulevard Phone Company (KS)

2. **ITC-214-20010418-00248**

- a. **Issued to:** Birch Telecom of Oklahoma, Inc. (DE)
- b. The following companies are parties to this 214:
 - 1. Birch Telecom of the Great Lakes, Inc. (DE)
 - 2. Birch Telecom of the South, Inc. (DE)
 - 3. Birch Telecom of the West, Inc. (DE)

3. **ITC-214-19980312-00187**

Issued to: Ionex Communications, Inc. (KS)

4. **ITC-214-19980211-00098**

Issued to: Ionex Communications North, Inc. (SD)

5. **ITC-214-19980317-00192**

Issued to: Ionex Communications South, Inc. (TX)

6. **ITC-214-19980330-00209**

Issued to: Telecom Resources, Inc. (TX)

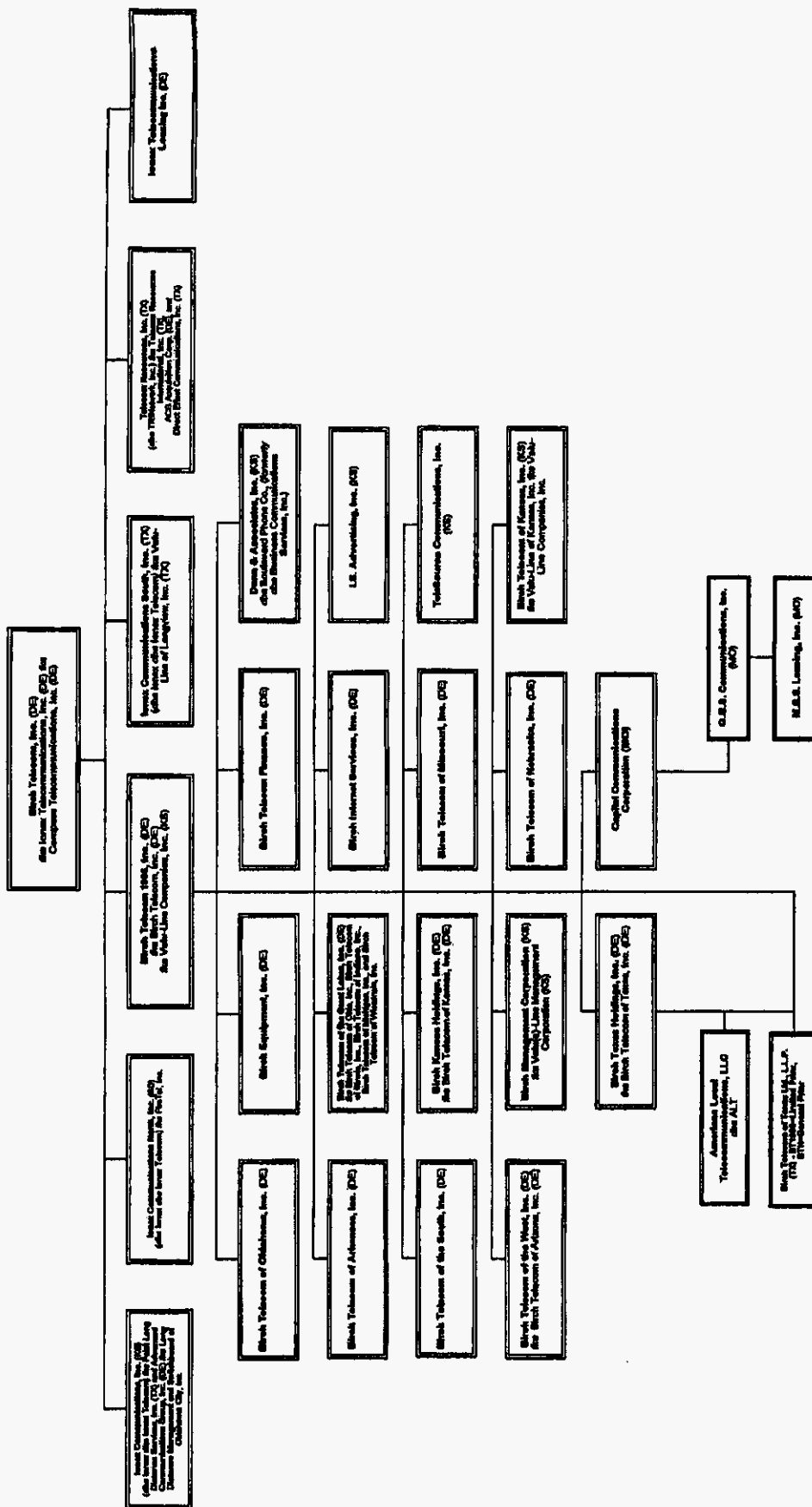
EXHIBIT B

BIRCH TELECOM

Subsidiaries Providing Domestic Telecommunications Services:

NAME	STATE OF INCORPORATION
American Local Telecommunications, L.L.C.	Texas
Birch Telecom of Kansas, Inc.	Kansas
Birch Telecom of Missouri, Inc.	Delaware
Birch Telecom of Oklahoma, Inc.	Delaware
Birch Telecom of the South, Inc.	Delaware
Birch Telecom of Texas Ltd., L.L.P.	Texas
Birch Telecom of the Great Lakes, Inc.	Delaware
Birch Telecom 1996, Inc.	Delaware
Ionex Communications, Inc.	Kansas
Ionex Communications North, Inc.	South Dakota
Ionex Communications South, Inc.	Texas
Telecom Resources, Inc.	Texas

BIRCH CORPORATE ORGANIZATION



READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page 1 of 1

(1) LOCKBOX # 358145			
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Skadden, Arps, Slate, Meagher & Flom LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$895.00	
(4) STREET ADDRESS LINE NO. 1 1440 New York Avenue, N.W.			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20005
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-371-7000		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0003-7714-66			
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME Birch Telecom, Inc.			
(14) STREET ADDRESS LINE NO. 1 2300 Main Street			
(15) STREET ADDRESS LINE NO. 2 6th Floor			
(16) CITY Kansas City		(17) STATE MO	(18) ZIP CODE 64108
(19) DAYTIME TELEPHONE NUMBER (include area code) 816-300-3000		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0014-6858-87			
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$895.00	(27A) TOTAL FEE \$895.00		
(28A) FCC CODE 1	(29A) FCC CODE 2		
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE		
(28B) FCC CODE 1	(29B) FCC CODE 2		
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Katherine M. Coughlan</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE <u>Katherine M. Coughlan</u> DATE <u>2-17-06</u>			
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

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FCC FORM 159

FEBRUARY 2003 (REVISED)